

Editors:

Elfina L. Sahetapy, A. Suhartati Lukito, Hwian Christianto

VICTIMOLOGY IN A NUTSHELL: Interdisciplinary Perspectives



GENTA
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Cetakan Pertama, 2019

Editor : Elfina L. Sahetapy, dkk

Layout : Amiza Ahmad Nur

Desain Cover : Ibnu Teguh

Pracetak : Khairul Bari

Supervisi : Nasrullah Ompu Bana

GENTA
PUBLISHING

Perum Pring Mayang Regency 2 Kav. 4

Jl. Rajawali Gedongan Baru

Banguntapan, Bantul-Yogyakarta

INDONESIA

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Anggota IKAPI

VICTIMOLOGY IN A NUTSHELL

Interdisciplinary Perspectives

Yogyakarta: GENTA Publishing 2019

x + 250 hlm.: 15.5 X 24 cm

ISBN: 978-602-0757-19-3

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Online Prostitution Involving Indonesian Actresses Victimology Perspective

Christianto¹

ABSTRACT

Prostitution case involving artists has increasingly occurred. Two artists, PR and NM, were arrested at Hotel, Jakarta, for allegedly providing sexual service.² In similar cases, PR and NM were arrested by Special Reserve Directorate of East Java Regional Police Department at hotel in Surabaya based on public report upon immoral act.³ In different cases, PR and NM were arrested in Batu, Malang during the similar operation.⁴ The disclosures of these cases involving Indonesian artists recently raise a big question on victimology role. Prostitution is defined in the same meaning as prostitution which is prohibited in Indonesian Criminal Law (KUHP). As one of Moral-related Crime, Article 296 of Penal Code prohibits anyone who facilitates obscene among one person and others as a livelihood. Focus of this study is on the prohibition of facilitating or encouraging the obscene act at the establishment of "sinful facility" or *bordeel*.⁵ It is clear that any person who facilitates the obscene act is defined as perpetrator. It indicates that the crime act is committed by perpetrator. The provision on victim side in Article 296 of Penal Code indicates that he is the object or subject of obscene.

Concerning whose party being determined as victim, the prostitution involving the use of sophisticated information technology. The prostitution modus operandi is the ease, speed and novelty of information to facilitate the information services which spreads widely and individually has attracted perpetrator to commit the act. The access speed provided by internet enables perpetrators in real time to connect service users and persons who will be offered to provide obscene services. The information novelty which can be changed, deleted and even made invisible is an incentive for perpetrator to commit the act. The online prostitution or cyber prostitution in the same form with prostitution as stipulated in Article 296 of Penal Code, the difference is in the use of information technology and the scope of act. But still, the focus of this study is on the prohibition of facilitating or encouraging the obscene act.

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² "Kasus Prostitusi Online di Surabaya", <https://www.merdeka.com/peristiwa/tragedi-miss-indonesia-terlibat-prostitusi.html>, 12 Desember 2019.

³ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

⁴ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

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¹³ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

¹⁴ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

¹⁵ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

¹⁶ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

¹⁷ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

¹⁸ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

¹⁹ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²⁰ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²¹ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²² "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²³ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²⁴ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²⁵ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²⁶ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²⁷ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²⁸ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

²⁹ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

³⁰ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

³¹ "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

³² "Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-prostitusi>, 12 Desember 2019.

The focus on victim becomes very important part in comprehending online prostitution overall. Focus on the cause of online prostitution to be committed becomes criminology. Penal Code emphasizes on the prohibition of prostitution act. The role of victimology in understanding online prostitution is very important bearing in mind that every crime must result in victim. As victim becomes important subject related to his/her position and contribution upon the prostitution act he/she involves in. The online prostitution involves 3 (three) parties including the provider of obscene service (=perpetrator), the user of obscene service and person who is involved in the obscene act. The last two persons have not been having clarity upon their role and contribution in online prostitution. It results in fatal consequence in the fulfillment of victim right bearing in mind that the party to be determined as victim remains unclear. Victim blaming occurs both in traditional and social ways since it is considered that all parties involved have committed wrongdoing and thus bear public blasphemy. In addition, the mass media coverage has confirmed the non-fulfillment of victim right fulfillment on online prostitution by non-clarity of parties to be victims. Based on these problems can be proposed for further studies including first, the significance of understanding online prostitution that involves artists based on victimology and second, the fulfillment of victim right on online prostitution involving artists.

2. DISCUSSION

Characteristic of Online Prostitution

Online prostitution or cyber prostitution viewed from its form has similarity with actual prostitution act between one person and others. The formulation of Prohibition in Article 286 of Penal Code becomes basis in understanding prostitution act. More specifically, Article 296 of Penal Code uses phrase "obscene act" (*raunchy-Dutch*) which is synonymous with term "obscene act" in Article 286 of Penal Code. The term refers to committing an act to have sexual enjoyment through any sexual intercourse. Should the understanding of "obscene" be related with Article 286 of Penal Code, it is found that the "obscene act" is limited to the act of having sexual enjoyment through sexual intercourse. Interrelating the obscene as understood in this case is not referred to the act that must be committed by the involved parties. Article 296 of Penal Code has been interpreted that the perpetrator connects two parties to commit obscene act hence the requirement of sexual intercourse. Concerning with the obscene that committed up to the sexual intercourse occurs then the victim's act is still fulfilled.

After understanding the meaning of "prostitution" in construction of act in Article 286 of Penal Code, it then follows with the online prostitution. Use of information system (internet) in providing immoral content or pornography in essence can be understood as part of cyber pornography and the content prohibition.⁶ The act of online prostitution has difference related to the manner in which the obscene is connected. It correlates with the use of electronic system (Internet) that involves information transaction. Lim confirmed that this situation causes internet pornography because:

- a. *It can be infinitely copied and distributed at minimal cost;*
- b. *The quality of image does not degrade on copying;*

It is difficult for law enforcement to detect due to the size and structure of the Internet and the availability of encryption;

It cannot be seized, in the normal sense of the term, once it has been deemed illegal because it is very easy to re-stock after a confiscation.⁷

In the context of cyber crime, internet pornography has difference in term of distribution ease, view technology sophistication. It is clear that online prostitution constitutes one crime that uses technology. The regulation on online prostitution prohibition in national legal system is found in Law No 11 year 2008 about Electronic Information and Transaction juncto Law No 36 year 2016 about Revision of Law No 11 year 2008 about Electronic Information and Transaction (UU ITE) and Law No 44 Year 2008 about Pornography (Pornography Law). The legal basis is Article 27 verse (1) juncto Article 45 verse (1) of UU ITE confirms the prohibition on act of electronic information or electronic document that contain immorality. Based on the definition, online prostitution is act that contains immorality content. The obscene is an act that lowers human dignity as sexual object. In addition, the obscene is sexual abuse that threat and health of other's reproduction system. Furthermore, the act of connecting the internet is worse act in lowering other dignity. The perpetrator of online prostitution facilitates lowering other dignity by sexual term.

This provision is shown in Article 4 of Pornography Act that the pornography content is defined in 2 (two) forms: explicit pornography and pornography service. The scope of pornography includes the content that explicitly contains sexual intercourse/defiant sexual behavior, sexual abuse, masturbation, nudity/content that resembles nudity, genital or child pornography. Second form, pornography service, involves providing nudity or content that resembles pornography explicitly genital, exploiting or exhibiting sexual activity or offering/advertising both directly the sexual service. Based on these two pornography forms, online prostitution is an act that is similar with pornography service in form of offering/advertising both directly the sexual services. The perpetrators of online prostitution basically perform an act of offering between one party and others by benefit. Interesting thing in the formulation of Article (2) of Pornography Law uses phrase "both directly and indirectly" the sexual services. The understanding upon the phrase uses *noscitur a sociis* principle to reach understanding. The phrase should be correlated with offering/advertising of sexual services. It means that advertising can be performed directly by offering sexual services or indirectly by offering secretly by purpose of providing sexual service. The last statement can be explained by performing telephone service which talks sexual content or by short message services or media related to the offering and services of information that containing sexual content in a direct and routine way. The act of offering indirectly the sexual service is performed within a condition where user is bond by agreement he/she gave to pay or subscribe the information periodically. In accordance with Article 4 verse (1) of Pornography Act that it is confirmed more to explicit pornography containing 6 (six) forms of pornography content. It should be confirmed that from the definition of pornography content, article 4 verse (1) of Pornography Act can be enacted. Only bearing in mind that act committed by any offering that provides opportunity for other people to use the sexual services followed by payment or any bond then it is clearly confirmed as sexual services.

⁷William, *Cyberspace and Law: Commentaries and Materials*, second edition, Victoria, Oxford University Press, p. 395

Other important thing to observe from the use of "sexual service" phrase has very different meaning with obscene connection construction as contained in Article 296 of Penal Code. Obscene requires the act has to be performed to fulfill the sexual desire without any purpose, which is different with sexual service. Pornography Act seems to confirm the meaning of sexual service not only in obscene term but also in sexual intercourse. It means that scope of understanding of Article 4 verse (2) letter d of Pornography Act is more directed to the offering of pornography by sexual intercourse service. Definitely it affects proofing process in online prostitution, which requires the sexual intercourse to be present. It is difficult to prove bearing in mind that the offering at the beginning requires it and the investigator/general attorney has to prove that.

Role of Victimology in Treating Artists Online Prostitution

Victimology is science that has specific argument related to crime. When criminologists are on the quest and understanding of the cause any act being committed which later turns out to be a crime, victimology provides view from victim side upon the crime that occurs. In considering the penal law that provides normative basis on the prohibition of act, victimology focuses on the rights of victim right upon the prohibited act. Mudzakkir⁸ confirms that there is correlation between perpetrator and victim upon the crime case, the victim must have contribution that determines the crime act. In understanding the victim role some victimology experts have different views. Ezzat A Fattah grouped victim typology into 5 (five) forms, first the victim considers himself/herself is innocent on the crime (non participating victim), second, the victim facilitates himself/herself to be victim (predisposed victims), third, the victim due to his/her acts has caused the crime to occur (provocative victims), fourth, the victim due to his/her act becomes the victim of crime (participating victims), fifth, the victim that is willing to be victim (false victims). It is observed that the victim group is based on the extent of person's knowledge and willingness to be victim of the crime that occurs to him/herself. Other view about victim typology is stated by Stephen Scafer⁹ who introduced six forms of victim: first, victim who doesn't have any role in the crime (unrelated victims), second, victim who facilitates himself/herself to be victim (provocative victims), third, victim who indirectly causes others to commit crime upon himself/herself (precipitative victims), fourth the victim due to his/her weak physical/biological condition (biologically weak), fifth, the victim due to himself/herself being isolated from society and sixth the victim who is also the perpetrator (self-victimizing victims). Scafer's typology seems to have similarity with Ezzat A Fattah's. however some differences exist among them.

Table 1.

Comparison of Victim Typology according to Ezzat A. Fattah and Stephen Scafer

Victim Role	Victim Typology according to Ezzat A. Fattah	Victim Typology according to Stephen Scafer
None		Unrelated victims

⁸Mudzakkir, "Perkembangan Viktimologi dan Hukum Pidana", *Makalah, Pelatihan Hukum Pidana dan Kriminologi Kerjasama Fakultas Hukum dan Masyarakat Hukum Pidana dan Kriminologi Indonesia (MAHUPIKI)*, Yogyakarta, 23-27 Februari 2014, h. 4

⁹Stephen Scafer, "The Beginning of Victimology" in Galaway & Hudson J., 1981, *Perspectives on Crime Victims*, Mosby, St. Louis, p. 10

Thinking	Non participating victims	Precipitative Victims
Character Condition	Predisposed Victims	Provocative Victims
Aggravating Behavior	Provocative Victims	
Provocation	Participating Victims	
Physical Condition		Biologically weak victims
Isolation		Socially weak victims
Perpetrator	False Victims	Self-victimizing victims

Based on the comparison, it is clear that Ezzat A Fattah put more emphasis on the victim role on crime while Stephen Scafer through unrelated victims explains the contrary. Other thing in Ezzat A Fattah's is the victim role in the crime act is measured from character, contribution on the crime act. Differently, Stephen Scafer scrutinizes the victim role from the character and behavior but also his/her physical condition and public isolation he/she experiences. Seemingly, Stephen Scafer thought is influenced by criminology thought particularly biological condition and public role on the crime act. The understanding has similarity with *Biological, Physiological and Biosocial Theories of Crime*¹⁰ from psychological side of crime. Whereas, understanding of person's contribution in making him/herself victim due to his/her behavior has resemblance with criminology theory based on sociological perspective like Anomie theory by Durkheim and Strain theory by Merton¹¹ as explained later by von Hentig research.¹² The understanding of criminology theory seemingly had influenced Stephen Scafer's concerning victim role

Understanding on victim typology provides basis for understanding that victim determination is performed from the role or contribution of the victim upon the crime act. Related to internet pornography, Lim confirmed 3 (three) main parties involved including the maker or originator of the content, the user who access the content and the internet service provider.¹³ If this understanding is applied to online prostitution that involves artists then it can be found that the originator of the content is the owner of internet website, the act of providing information and information service with sexual service from the user to the artists that provides sexual service. The user in this case can be considered as 2 (two) parties including the persons who receive and provide agreement to enjoy sexual service or artists who provide sexual service. The last party is named as user bearing the activity utilizes the internet service with immoral content. The internet service provider is the social media like facebook, whatsapp, instagrmm or other services that connect the parties. For the last party, it needs to be discussed further by concerning the purpose and direction of the social media service making. A social media service which from beginning was established to disseminate moral material or pornography has been responsible for internet pornography (online prostitution that involves artists). However, it is impossible for any social media to have such purpose from beginning, but the owner of social media must take some measures to prevent those who use social media for sexual service. The author has opinion that the first two parties were

¹⁰ *Biological, Physiological and Biosocial Theories based on Lombroso theory which study criminal's moriology*. Mark A. Lanier & Stuart Henry. Third Edition, Westview, Boulder, 2010, p. 95-99.

¹¹ *Kriminologi*. Evi Achjani Zulva, Cetakan ke-16, Rajawali Pers, Jakarta, 2016, hlm. 57-66

¹² *Scope of Contemporary Victimology*, Makalah, Pelatihan Asosiasi Pengajar Viktimologi Indonesia, Balikpapan, 19 April 2017, h. 11

involved in online prostitution that involved artists. However, in this case the role of artists in online prostitution should be considered. From this perspective, the artists having role as perpetrator participated in offering sexual service and performed the services must be determined as perpetrator and victim at once. It is interesting to comprehend the role of artists based on two victim typologies as stated previously.

Based on victim typology of Ezzat A. Fattah, the artists in online prostitution case can be categorized in forms of *Provocative Victims*, *Participating victims* and *False victims*. The *provocative victims* can be understood from the artists behavior as public figure who have a good outlook. The two things become important factor that attract sexual service users to use the services. Consumptive factor that triggers big demand from artists can be understood in form of behaviors or life styles that stimulates the crime upon him/herself. In *Participating victims* case, the artists provided the consent that his/her body be advertised in internet website as a service provider. While as *false victims*, the artists provided directly the sexual service without prohibition. In comparison with Stephen Scafer typology, the artists had contributed to online prostitution. The understanding of artist contribution can be analyzed in *Provocative Victims*, *Self-Victimizing Victims*. The first form has similarity in condition with *provocative victims* of A Fattah. Interesting thing is found in the case that artists in online prostitution has become *self-victimizing victims* since he/she was considered to commit crime against him/herself. This is based on the understanding that everybody in general condition tend to avoid the crime against him/herself. The artists in online prostitution did the contrary, he/she put him/herself as a perpetrator and victim at once. Definitely it becomes unique victim and needs the right fulfillment. The artists didn't do the same mistakes or continuously becomes victim.

The fulfillment of Online Prostitution Victim Right

Idea of fulfilling victim right in artists who involved in online prostitution is inseparable from the purpose of victimology. The prohibition of online prostitution in penal code, both KUHP and PP, emphasizes the prohibition on perpetrator. In online prostitution, these artists considered as perpetrators and victims at once in the act. Understanding on the role of artists in online prostitution by public is frequently considered as the artist wrongdoing. The disadvantage is found when the public blasphemed the artists upon the cases and gave them negative stigma. The last condition will create victim blaming that lead to the victim continuously becomes victim and creating new socially weak victims. It means that the artists who are isolated by public will become victims of isolation called second victimization¹⁴. Based on the importance of the victim protection, the understanding of victim right fulfillment for artists who were involved in online prostitution becomes very important.

The fulfillment of victim right must refer to the existing provision about the victim right. International Instrument related to the victim right fulfillment can be referred to *The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985*. The declaration defines victims as

"persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions of criminal laws operative within Member States, including those laws proscribing criminal abuse of power."

¹⁴Second victimisation is repetition or palecement of victims as further victims of what they experienced because they were considered as victims of the first crime.
see Lorraine Wolhuter, Neil Olley & David Denham, *Victimology: Victimisation and Victims' Rights*, Routledge-Cavendish, New York, 2004.

through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights relating"⁵

Based on the declaration, any person becomes victim because he/she experiences suffering physical, mental, emotional, economical loss or diminishing his/her right. Different understanding is stated in definition of "victim" according to Law No 13 year 2006 juncto Acts No 31 year 2014 Witness and Victim Protection (The Witness and Victim Protection Law). This law strengthens protection of victims' rights even though it is already regulated in other laws and regulations. Victim is defined as "person who experiences physic, mental, and/or economical loss due to crime act." The victim criterion is determined from the existence/absence of suffering or loss due to crime act. In online prostitution, the parties who involve are conscious or willing to commit prostitution act. It means that online prostitution doesn't create victim as defined by Witness and

The difference of definition on scope of "victim" in correlation with the position of artists in prostitution appears when it is defined after the crime has been revealed. It is important to note that victim contribution must be clear from the law it supposes to violate. If general online prostitution who involve artists use Penal Code (KUHP) or UU ITE (Electronic Information and Transactions Law) then the perpetrator is the person who demand the sexual service or administrator of website whereas the artists are the victims. The fulfillment of victim right in this case has relationship with the fulfillment of human right on security and legal provision. It is similar with Article 1 verse (1) of Constitution 1945 that confirm the legal provision should the artists are not perpetrator. He/she has right to be free from any blasphemy and his/her position in society must be restored or repaired according to Article 28G verse (1) of Constitution 1945. More importantly any negative labeling as perpetrator of online prostitution upon these artists is not allowed. Different when general attorney prosecute them with article 30 jo Article 4 verse (2) letter d of Pornography Law. The construction of act in Article 30 jo Article 4 verse (2) letter d of Pornography Law confirms the prohibition on act of providing pornography service that offer or advertise both directly and indirectly the sexual services. It means that as long as the artist is proved sexual activity including photographs, videos or writings made purposefully to provide sexual service and she/he is involved in the service then he/she has position as perpetrator and not the victim.

CONCLUSION

The determination of online prostitution victim that involves artists must be viewed from casuistic based on the characteristic of online prostitution act and the role/participation of artists. The prohibition upon online prostitution as contained in Penal Code, UU ITE (electronic information law), and Pornography Act provide different effect on the definition of victim. Penal Code and UU ITE still put emphasis on perpetrator limited to the parties who offer sexual service as living. It means that the artists have position as victim despite they agree to contribute in the act. Different with the Pornography Law that provides prohibition on act of offering or advertising sexual service both directly and indirectly. Artists who involve in sexual service offering and proved

⁵United Nations, "The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985", https://www.un.org/en/documents/atrocities-crimes/Doc.29_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf diunduh 4 September 2019
⁶Hans Semendawai, "Pengakuan dan Pengaturan Hak-Hak Korban Kejahatan di Indonesia", Makalah, Pelatihan Asosiasi Pengajar Viktimologi 2017, hlm. 11

to agree that information concerning their selves to be published in internet as sexual objectives longer positioned as victim. Role of victimology in defining online prostitution that involve very important in defining position of victim as precipitating victim, provocative victim, and at once. It is important bearing in mind that the artists who involve in online prostitution must their right as victim. The fulfillment of right as victim so far remains focusing on the restoration physical, mental, psychological and economic conditions. Indeed, the fulfillment of victim artists who involve in online prostitution is more related with the fulfillment of human rights legal provision and security related to dignity and good name in society.

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